



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-2791/1
TJD:amn

2017 SENATE BILL 359

July 13, 2017 - Introduced by Senators VINEHOUT, CARPENTER, L. TAYLOR and HANSEN, cosponsored by Representatives SARGENT, KOLSTE, C. TAYLOR, ANDERSON, CROWLEY, BERCEAU, VRUWINK, ZAMARRIPA, CONSIDINE, SUBECK and BROSTOFF. Referred to Committee on Insurance, Housing and Trade.

1 **AN ACT to amend** 1.12 (1) (b), 13.172 (1), 13.62 (2), 13.95 (intro.), 16.002 (2),
2 16.004 (4), 16.004 (5), 16.004 (12) (a), 16.045 (1) (a), 16.15 (1) (ab), 16.41 (4),
3 16.417 (1) (a), 16.52 (7), 16.528 (1) (a), 16.53 (2), 16.54 (9) (a) 1., 16.70 (2), 16.72
4 (2) (e) (intro.), 16.72 (2) (f), 16.75 (1m), 16.75 (8) (am), 16.75 (8) (bm), 16.75 (9),
5 16.765 (1), 16.765 (2), 16.765 (4), 16.765 (5), 16.765 (6), 16.765 (7) (intro.),
6 16.765 (7) (d), 16.765 (8), 16.85 (2), 16.865 (8), 25.50 (1) (d), 49.45 (2) (a) 3., 71.26
7 (1) (be), 77.54 (9a) (a), 101.055 (2) (a), 230.03 (3), 230.80 (4), 230.90 (1) (c) and
8 635.18 (1); and **to create** 13.94 (1) (dj), 13.94 (1s) (c) 9., 40.02 (54) (n), 70.11 (41c)
9 and chapter 636 of the statutes; **relating to:** the Badger Health Benefit
10 Authority, health benefit exchange operation, granting rule-making authority,
11 and providing a criminal penalty.

Analysis by the Legislative Reference Bureau

This bill requires the establishment and operation of a Wisconsin Health Benefit Exchange, which is administered by the Badger Health Benefit Authority that is also created in the bill.

SENATE BILL 359***Badger Health Benefit Authority***

This bill creates the Badger Health Benefit Authority (authority) that is a public body corporate and politic that is created by state law but that is not a state agency. The authority is governed by a board of directors consisting of the commissioner of insurance, the secretary of employee trust funds, the director of the state Medical Assistance program, the executive directors of the Wisconsin Collaborative for Healthcare Quality and the Wisconsin Health Information Organization, and the following members who are nominated by the governor and, with the advice and consent of the senate, appointed for three-year terms: a member in good-standing of the American Academy of Actuaries, a health economist, an employee benefits specialist, a representative of small employers, a representative of an organization that represents consumer interests, a representative of organized labor, and an individual with experience in health care administration. The chairperson of the board is the commissioner. The board must appoint an executive director of the authority. The executive director must, among other duties, supervise the administrative affairs and general management and operation of the authority, employ professional and clerical staff, as necessary, and prepare the authority's annual budget.

The authority is not a state agency, so numerous laws that apply to state agencies do not apply to the authority. However, the authority is treated like a state agency in the following ways, among others: it is subject to auditing by the Legislative Audit Bureau; it is subject to open meeting and open records laws; and it is exempt from property tax, income tax, and sales and uses taxes. The authority has powers, including adopting bylaws and policies and procedures for the regulation of its affairs and conduct of its business; hiring employees; incurring debt; suing and being sued in its own name; and executing contracts. The bill establishes a process that the authority must use when it contracts for professional services. Under the bill, the authority is subject to civil liability for its acts or omissions except that the maximum amount recoverable in a civil action against the authority is \$100,000. However, a member of the authority's board of directors, the authority's executive director, or an authority employee is exempt from civil liability unless the member, director, or employee acted with willful misconduct or in intentional violation of the law. The bill also imposes restrictions on board members and the authority's executive director pertaining to conflicts of interest and requires board members and the executive director to file financial disclosures.

Health benefit exchange

Under the bill, the authority must establish and operate a Wisconsin Health Benefit Exchange in this state, must make qualified health plans, with effective dates on or before January 1, 2018, available to qualified individuals and qualified employers, and must seek federal grants and other funding for the purpose of the exchange. A qualified health plan is defined in the bill, generally, as a health benefit plan that covers the costs of health care services and that meets the certification criteria described in the federal Patient Protection and Affordable Care Act (PPACA). A qualified individual is defined in the bill, generally, as a citizen or national of the United States, or an alien lawfully present in the United States, who

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is not imprisoned in a correctional facility and who resides in this state. A qualified employer is defined in the bill, generally, as a small employer with not more than 100 employees that either 1) has its principal place of business in this state and elects to provide coverage to all of its eligible employees, wherever employed, through the small business health options program component of the exchange (SHOP Exchange) established by the authority; or 2) elects to provide coverage through the SHOP Exchange to all of its eligible employees who are principally employed in this state.

Only health benefit plans that are certified by the authority as qualified health plans may be offered through the exchange. To be certified as a qualified health plan, a health benefit plan must provide the essential health benefits package described in PPACA, its premium rates and contract language must have been filed with and not disapproved by the commissioner, it must provide at least a bronze level of coverage, as determined by the authority in accordance with criteria developed by the secretary of the federal Department of Health and Human Services, its cost sharing must not exceed limits established in PPACA, the insurer offering it must meet specified criteria, and the authority must determine that making the plan available through the exchange is in the interest of qualified individuals and qualified employers in this state.

The authority must assign a rating to, and determine the level of coverage of, each qualified health plan offered through the exchange. The levels of coverage under PPACA are bronze, silver, gold, and platinum, and are based on what percentage of the full actuarial value of the benefits provided under the plan the benefits under the plan provides. An eligible employee of a qualified employer that provides coverage through the SHOP Exchange may enroll in any qualified health plan offered through the SHOP Exchange at the level of coverage specified by his or her employer.

After the exchange begins operating, no insurer may offer or issue health benefit plan coverage in this state to an individual or a small employer except through the exchange. Although any insurer that is authorized to do business in this state in one or more lines of insurance that includes health insurance may offer qualified health plans through the exchange, a health benefit plan may not be certified as a qualified health plan unless the insurer that offers it, among other things, is in good standing, charges the same premium for the plan regardless of whether it is offered directly by the insurer or through an insurance intermediary, offers through the exchange at least one qualified health plan in each of the silver and gold levels of coverage, and complies with regulations of the federal DHHS and any other requirements established by the authority. In addition, any insurer that seeks certification of a health benefit plan as a qualified health plan must provide a justification for any premium increase; must make specified information available to the public, such as data on enrollment and on the number of claims denied, claims payment policies and practices, and financial disclosures; and must permit individuals enrolled in the plan to learn the amount that an individual would be responsible for paying toward the cost of a specific item or service.

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An insurer that offers coverage through the exchange must establish a toll-free hotline for providing information to enrollees and must pay a commission, determined by the authority, to an insurance intermediary who enrolls a qualified individual or employees of a qualified employer in a qualified health plan offered by the insurer through the exchange. For determining premiums, an insurer that offers coverage through the exchange may pool together all individuals and employees with coverage under all of the plans issued by the insurer through the exchange. To pay administrative expenses of the exchange, the authority may impose on each insurer offering plans through the exchange a surcharge that is based on the insurer's total premium or flat dollar amount per enrollee collected through the exchange.

The bill sets out numerous responsibilities for the authority with respect to the exchange. In addition to the administrative duties related to certifying and rating health benefit plans and enrolling qualified individuals and qualified employers, the authority must provide for the operation of a toll-free telephone hotline to respond to requests for assistance; establish an appeals process; establish and operate a service center to provide information; publicize the exchange; maintain an Internet site with comparative information about qualified health plans; screen applicants for eligibility for Medical Assistance and, if eligible, assist them to enroll in Medical Assistance; select, and award grants to, entities to serve as navigators for conducting public education activities and distributing information about, and facilitating enrollment in, qualified health plans; review the rate of premium growth within the exchange and outside of the exchange; and develop recommendations on whether qualified employers should be limited to small employers. The authority may establish risk adjustment mechanisms for the exchange, contract with a third-party administrator for services on behalf of the exchange, and establish sub-exchanges or other exchanges provided for under federal law. The authority must keep an accounting of all exchange-related activities and receipts and expenditures and annually submit a report of the accounting to the federal DHHS, the governor, the commissioner, and the legislature.

This proposal may contain a health insurance mandate requiring a social and financial impact report under s. 601.423, stats.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 1.12 (1) (b) of the statutes is amended to read:

2 1.12 (1) (b) "State agency" means an office, department, agency, institution of
3 higher education, the legislature, a legislative service agency, the courts, a judicial
4 branch agency, an association, society, or other body in state government that is

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1 created or authorized to be created by the constitution or by law, for which
2 appropriations are made by law, excluding the Badger Health Benefit Authority and
3 the Wisconsin Economic Development Corporation.

4 **SECTION 2.** 13.172 (1) of the statutes is amended to read:

5 13.172 (1) In this section, “agency” means an office, department, agency,
6 institution of higher education, association, society, or other body in state
7 government created or authorized to be created by the constitution or any law, that
8 is entitled to expend moneys appropriated by law, including the legislature and the
9 courts, and any authority created in subch. II of ch. 114 or subch. III of ch. 636 or in
10 ch. 231, 233, 234, 238, or 279.

11 **SECTION 3.** 13.62 (2) of the statutes is amended to read:

12 13.62 (2) “Agency” means any board, commission, department, office, society,
13 institution of higher education, council, or committee in the state government, or any
14 authority created in subch. II of ch. 114 or subch. III of ch. 636 or in ch. 231, 232, 233,
15 234, 237, 238, or 279, except that the term does not include a council or committee
16 of the legislature.

17 **SECTION 4.** 13.94 (1) (dj) of the statutes is created to read:

18 13.94 (1) (dj) At least once every 2 years, perform a financial audit and
19 performance evaluation audit of any health benefit plan exchange under subch. II
20 of ch. 636 and an audit of the Badger Health Benefit Authority’s policies and
21 management practices and file copies of each audit report under this paragraph with
22 the distributees specified in par. (b).

23 **SECTION 5.** 13.94 (1s) (c) 9. of the statutes is created to read:

24 13.94 (1s) (c) 9. The Badger Health Benefit Authority for the cost of the audit
25 under sub. (1) (dj).

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1 **SECTION 6.** 13.95 (intro.) of the statutes is amended to read:

2 **13.95 Legislative fiscal bureau.** (intro.) There is created a bureau to be
3 known as the “Legislative Fiscal Bureau” headed by a director. The fiscal bureau
4 shall be strictly nonpartisan and shall at all times observe the confidential nature
5 of the research requests received by it; however, with the prior approval of the
6 requester in each instance, the bureau may duplicate the results of its research for
7 distribution. Subject to s. 230.35 (4) (a) and (f), the director or the director’s
8 designated employees shall at all times, with or without notice, have access to all
9 state agencies, the University of Wisconsin Hospitals and Clinics Authority, the
10 Wisconsin Aerospace Authority, the Badger Health Benefit Authority, the Lower Fox
11 River Remediation Authority, the Wisconsin Economic Development Corporation,
12 and the Fox River Navigational System Authority, and to any books, records, or other
13 documents maintained by such agencies or authorities and relating to their
14 expenditures, revenues, operations, and structure.

15 **SECTION 7.** 16.002 (2) of the statutes is amended to read:

16 16.002 (2) “Departments” means constitutional offices, departments, and
17 independent agencies and includes all societies, associations, and other agencies of
18 state government for which appropriations are made by law, but not including
19 authorities created in subch. II of ch. 114 or subch. III of ch. 636 or in ch. 231, 232,
20 233, 234, 237, 238, or 279.

21 **SECTION 8.** 16.004 (4) of the statutes is amended to read:

22 16.004 (4) FREEDOM OF ACCESS. The secretary and such employees of the
23 department as the secretary designates may enter into the offices of state agencies
24 and authorities created under subch. II of ch. 114 and subch. III of ch. 636 and under
25 chs. 231, 233, 234, 237, 238, and 279, and may examine their books and accounts and

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1 any other matter that in the secretary's judgment should be examined and may
2 interrogate the agency's employees publicly or privately relative thereto.

3 **SECTION 9.** 16.004 (5) of the statutes is amended to read:

4 16.004 (5) AGENCIES AND EMPLOYEES TO COOPERATE. All state agencies and
5 authorities created under subch. II of ch. 114 and subch. III of ch. 636 and under chs.
6 231, 233, 234, 237, 238, and 279, and their officers and employees, shall cooperate
7 with the secretary and shall comply with every request of the secretary relating to
8 his or her functions.

9 **SECTION 10.** 16.004 (12) (a) of the statutes is amended to read:

10 16.004 (12) (a) In this subsection, "state agency" means an association,
11 authority, board, department, commission, independent agency, institution, office,
12 society, or other body in state government created or authorized to be created by the
13 constitution or any law, including the legislature, the office of the governor, and the
14 courts, but excluding the University of Wisconsin Hospitals and Clinics Authority,
15 the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, the
16 Wisconsin Economic Development Corporation, the Badger Health Benefit
17 Authority, and the Fox River Navigational System Authority.

18 **SECTION 11.** 16.045 (1) (a) of the statutes is amended to read:

19 16.045 (1) (a) "Agency" means an office, department, independent agency,
20 institution of higher education, association, society, or other body in state
21 government created or authorized to be created by the constitution or any law, that
22 is entitled to expend moneys appropriated by law, including the legislature and the
23 courts, but not including an authority created in subch. II of ch. 114 or subch. III of
24 ch. 636 or in ch. 231, 232, 233, 234, 237, 238, or 279.

25 **SECTION 12.** 16.15 (1) (ab) of the statutes is amended to read:

SENATE BILL 359**SECTION 12**

1 16.15 (1) (ab) “Authority” has the meaning given under s. 16.70 (2), but
2 excludes the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox
3 River Remediation Authority, and the Wisconsin Economic Development
4 Corporation, and the Badger Health Benefit Authority.

5 **SECTION 13.** 16.41 (4) of the statutes is amended to read:

6 16.41 (4) In this section, “authority” means a body created under subch. II of
7 ch. 114 or subch. III of ch. 636 or under ch. 231, 233, 234, 237, 238, or 279.

8 **SECTION 14.** 16.417 (1) (a) of the statutes is amended to read:

9 16.417 (1) (a) “Agency” means an office, department, independent agency,
10 institution of higher education, association, society, or other body in state
11 government created or authorized to be created by the constitution or any law, that
12 is entitled to expend moneys appropriated by law, including the legislature and the
13 courts, but not including an authority or the body created under subch. III of ch. 636.

14 **SECTION 15.** 16.52 (7) of the statutes is amended to read:

15 16.52 (7) PETTY CASH ACCOUNT. With the approval of the secretary, each agency
16 that is authorized to maintain a contingent fund under s. 20.920 may establish a
17 petty cash account from its contingent fund. The procedure for operation and
18 maintenance of petty cash accounts and the character of expenditures therefrom
19 shall be prescribed by the secretary. In this subsection, “agency” means an office,
20 department, independent agency, institution of higher education, association,
21 society, or other body in state government created or authorized to be created by the
22 constitution or any law, that is entitled to expend moneys appropriated by law,
23 including the legislature and the courts, but not including an authority created in
24 subch. II of ch. 114 or subch. III of ch. 636 or in ch. 231, 233, 234, 237, 238, or 279.

25 **SECTION 16.** 16.528 (1) (a) of the statutes is amended to read:

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1 16.528 (1) (a) “Agency” means an office, department, independent agency,
2 institution of higher education, association, society, or other body in state
3 government created or authorized to be created by the constitution or any law, that
4 is entitled to expend moneys appropriated by law, including the legislature and the
5 courts, but not including an authority created in subch. II of ch. 114 or subch. III of
6 ch. 636 or in ch. 231, 233, 234, 237, 238, or 279.

7 **SECTION 17.** 16.53 (2) of the statutes is amended to read:

8 16.53 (2) IMPROPER INVOICES. If an agency receives an improperly completed
9 invoice, the agency shall notify the sender of the invoice within 10 working days after
10 it receives the invoice of the reason it is improperly completed. In this subsection,
11 “agency” means an office, department, independent agency, institution of higher
12 education, association, society, or other body in state government created or
13 authorized to be created by the constitution or any law, that is entitled to expend
14 moneys appropriated by law, including the legislature and the courts, but not
15 including an authority created in subch. II of ch. 114 or subch. III of ch. 636 or in ch.
16 231, 233, 234, 237, 238, or 279.

17 **SECTION 18.** 16.54 (9) (a) 1. of the statutes is amended to read:

18 16.54 (9) (a) 1. “Agency” means an office, department, independent agency,
19 institution of higher education, association, society or other body in state
20 government created or authorized to be created by the constitution or any law, which
21 is entitled to expend moneys appropriated by law, including the legislature and the
22 courts, but not including an authority created in subch. II of ch. 114 or subch. III of
23 ch. 636 or in ch. 231, 233, 234, 237, 238, or 279.

24 **SECTION 19.** 16.70 (2) of the statutes is amended to read:

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1 16.70 (2) “Authority” means a body created under subch. II of ch. 114 or subch.
2 III of ch. 636 or under ch. 231, 232, 233, 234, 237, or 279.

3 **SECTION 20.** 16.72 (2) (e) (intro.) of the statutes is amended to read:

4 16.72 (2) (e) (intro.) In writing the specifications under this subsection, the
5 department and any other designated purchasing agent under s. 16.71 (1) shall
6 incorporate requirements for the purchase of products made from recycled materials
7 and recovered materials if their use is technically and economically feasible. Each
8 authority other than the University of Wisconsin Hospitals and Clinics Authority
9 ~~and~~, the Lower Fox River Remediation Authority, and the Badger Health Benefit
10 Authority, in writing specifications for purchasing by the authority, shall incorporate
11 requirements for the purchase of products made from recycled materials and
12 recovered materials if their use is technically and economically feasible. The
13 specifications shall include requirements for the purchase of the following materials:

14 **SECTION 21.** 16.72 (2) (f) of the statutes is amended to read:

15 16.72 (2) (f) In writing specifications under this subsection, the department,
16 any other designated purchasing agent under s. 16.71 (1), and each authority other
17 than the University of Wisconsin Hospitals and Clinics Authority ~~and~~, the Lower Fox
18 River Remediation Authority, and the Badger Health Benefit Authority shall
19 incorporate requirements relating to the recyclability and ultimate disposition of
20 products and, wherever possible, shall write the specifications so as to minimize the
21 amount of solid waste generated by the state, consistent with the priorities
22 established under s. 287.05 (12). All specifications under this subsection shall
23 discourage the purchase of single-use, disposable products and require, whenever
24 practical, the purchase of multiple-use, durable products.

25 **SECTION 22.** 16.75 (1m) of the statutes is amended to read:

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1 16.75 (1m) The department shall award each order or contract for materials,
2 supplies, or equipment on the basis of life cycle cost estimates, whenever such action
3 is appropriate. Each authority other than the University of Wisconsin Hospitals and
4 Clinics Authority, the Lower Fox River Remediation Authority, and the Wisconsin
5 Aerospace Authority, and the Badger Health Benefit Authority shall award each
6 order or contract for materials, supplies, or equipment on the basis of life cycle cost
7 estimates, whenever such action is appropriate. The terms, conditions, and
8 evaluation criteria to be applied shall be incorporated in the solicitation of bids or
9 proposals. The life cycle cost formula may include, but is not limited to, the
10 applicable costs of energy efficiency, acquisition and conversion, money,
11 transportation, warehousing and distribution, training, operation and maintenance
12 and disposition or resale. The department shall prepare documents containing
13 technical guidance for the development and use of life cycle cost estimates, and shall
14 make the documents available to local governmental units.

15 **SECTION 23.** 16.75 (8) (am) of the statutes is amended to read:

16 16.75 (8) (am) The department, any other designated purchasing agent under
17 s. 16.71 (1), any agency making purchases under s. 16.74, and each authority other
18 than the University of Wisconsin Hospitals and Clinics Authority and, the Lower Fox
19 River Remediation Authority, and the Badger Health Benefit Authority shall, to the
20 extent practicable, make purchasing selections using specifications developed under
21 s. 16.72 (2) (e) to maximize the purchase of materials utilizing recycled materials and
22 recovered materials.

23 **SECTION 24.** 16.75 (8) (bm) of the statutes is amended to read:

24 16.75 (8) (bm) Each agency and authority other than the University of
25 Wisconsin Hospitals and Clinics Authority and, the Lower Fox River Remediation

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1 Authority, and the Badger Health Benefit Authority shall ensure that the average
2 recycled or recovered content of all paper purchased by the agency or authority
3 measured as a proportion, by weight, of the fiber content of paper products purchased
4 in a fiscal year, is not less than 40 percent of all purchased paper.

5 **SECTION 25.** 16.75 (9) of the statutes is amended to read:

6 16.75 (9) The department, any other designated purchasing agent under s.
7 16.71 (1), any agency making purchases under s. 16.74, and any authority other than
8 the University of Wisconsin Hospitals and Clinics Authority ~~and~~, the Lower Fox
9 River Remediation Authority, and the Badger Health Benefit Authority shall, to the
10 extent practicable, make purchasing selections using specifications prepared under
11 s. 16.72 (2) (f).

12 **SECTION 26.** 16.765 (1) of the statutes is amended to read:

13 16.765 (1) Contracting agencies, the University of Wisconsin Hospitals and
14 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
15 Aerospace Authority, the Badger Health Benefit Authority, the Lower Fox River
16 Remediation Authority, the Wisconsin Economic Development Corporation, and the
17 Bradley Center Sports and Entertainment Corporation shall include in all contracts
18 executed by them a provision obligating the contractor not to discriminate against
19 any employee or applicant for employment because of age, race, religion, color,
20 handicap, sex, physical condition, developmental disability as defined in s. 51.01 (5),
21 sexual orientation as defined in s. 111.32 (13m), or national origin and, except with
22 respect to sexual orientation, obligating the contractor to take affirmative action to
23 ensure equal employment opportunities.

24 **SECTION 27.** 16.765 (2) of the statutes is amended to read:

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1 16.765 (2) Contracting agencies, the University of Wisconsin Hospitals and
2 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
3 Aerospace Authority, the Badger Health Benefit Authority, the Lower Fox River
4 Remediation Authority, the Wisconsin Economic Development Corporation, and the
5 Bradley Center Sports and Entertainment Corporation shall include the following
6 provision in every contract executed by them: “In connection with the performance
7 of work under this contract, the contractor agrees not to discriminate against any
8 employee or applicant for employment because of age, race, religion, color, handicap,
9 sex, physical condition, developmental disability as defined in s. 51.01 (5), sexual
10 orientation or national origin. This provision shall include, but not be limited to, the
11 following: employment, upgrading, demotion or transfer; recruitment or recruitment
12 advertising; layoff or termination; rates of pay or other forms of compensation; and
13 selection for training, including apprenticeship. Except with respect to sexual
14 orientation, the contractor further agrees to take affirmative action to ensure equal
15 employment opportunities. The contractor agrees to post in conspicuous places,
16 available for employees and applicants for employment, notices to be provided by the
17 contracting officer setting forth the provisions of the nondiscrimination clause”.

18 **SECTION 28.** 16.765 (4) of the statutes is amended to read:

19 16.765 (4) Contracting agencies, the University of Wisconsin Hospitals and
20 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
21 Aerospace Authority, the Badger Health Benefit Authority, the Lower Fox River
22 Remediation Authority, and the Bradley Center Sports and Entertainment
23 Corporation shall take appropriate action to revise the standard government
24 contract forms under this section.

25 **SECTION 29.** 16.765 (5) of the statutes is amended to read:

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1 16.765 (5) The head of each contracting agency and the boards of directors of
2 the University of Wisconsin Hospitals and Clinics Authority, the Fox River
3 Navigational System Authority, the Wisconsin Aerospace Authority, the Badger
4 Health Benefit Authority, the Lower Fox River Remediation Authority, the
5 Wisconsin Economic Development Corporation, and the Bradley Center Sports and
6 Entertainment Corporation shall be primarily responsible for obtaining compliance
7 by any contractor with the nondiscrimination and affirmative action provisions
8 prescribed by this section, according to procedures recommended by the department.
9 The department shall make recommendations to the contracting agencies and the
10 boards of directors of the University of Wisconsin Hospitals and Clinics Authority,
11 the Fox River Navigational System Authority, the Wisconsin Aerospace Authority,
12 the Badger Health Benefit Authority, the Lower Fox River Remediation Authority,
13 the Wisconsin Economic Development Corporation, and the Bradley Center Sports
14 and Entertainment Corporation for improving and making more effective the
15 nondiscrimination and affirmative action provisions of contracts. The department
16 shall promulgate such rules as may be necessary for the performance of its functions
17 under this section.

18 **SECTION 30.** 16.765 (6) of the statutes is amended to read:

19 16.765 (6) The department may receive complaints of alleged violations of the
20 nondiscrimination provisions of such contracts. The department shall investigate
21 and determine whether a violation of this section has occurred. The department may
22 delegate this authority to the contracting agency, the University of Wisconsin
23 Hospitals and Clinics Authority, the Fox River Navigational System Authority, the
24 Wisconsin Aerospace Authority, the Badger Health Benefit Authority, the Lower Fox
25 River Remediation Authority, the Wisconsin Economic Development Corporation, or

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1 the Bradley Center Sports and Entertainment Corporation for processing in
2 accordance with the department's procedures.

3 **SECTION 31.** 16.765 (7) (intro.) of the statutes is amended to read:

4 16.765 (7) (intro.) When a violation of this section has been determined by the
5 department, the contracting agency, the University of Wisconsin Hospitals and
6 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
7 Aerospace Authority, the Badger Health Benefit Authority, the Lower Fox River
8 Remediation Authority, the Wisconsin Economic Development Corporation, or the
9 Bradley Center Sports and Entertainment Corporation, the contracting agency, the
10 University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational
11 System Authority, the Wisconsin Aerospace Authority, the Badger Health Benefit
12 Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic
13 Development Corporation, or the Bradley Center Sports and Entertainment
14 Corporation shall:

15 **SECTION 32.** 16.765 (7) (d) of the statutes is amended to read:

16 16.765 (7) (d) Direct the violating party to take immediate steps to prevent
17 further violations of this section and to report its corrective action to the contracting
18 agency, the University of Wisconsin Hospitals and Clinics Authority, the Fox River
19 Navigational System Authority, the Wisconsin Aerospace Authority, the Badger
20 Health Benefit Authority, the Lower Fox River Remediation Authority, the
21 Wisconsin Economic Development Corporation, or the Bradley Center Sports and
22 Entertainment Corporation.

23 **SECTION 33.** 16.765 (8) of the statutes is amended to read:

24 16.765 (8) If further violations of this section are committed during the term
25 of the contract, the contracting agency, the Fox River Navigational System Authority,

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1 the Wisconsin Aerospace Authority, the Badger Health Benefit Authority, the Lower
2 Fox River Remediation Authority, the Wisconsin Economic Development
3 Corporation, or the Bradley Center Sports and Entertainment Corporation may
4 permit the violating party to complete the contract, after complying with this section,
5 but thereafter the contracting agency, the Fox River Navigational System Authority,
6 the Wisconsin Aerospace Authority, the Badger Health Benefit Authority, the Lower
7 Fox River Remediation Authority, the Wisconsin Economic Development
8 Corporation, or the Bradley Center Sports and Entertainment Corporation shall
9 request the department to place the name of the party on the ineligible list for state
10 contracts, or the contracting agency, the Fox River Navigational System Authority,
11 the Wisconsin Aerospace Authority, the Badger Health Benefit Authority, the Lower
12 Fox River Remediation Authority, the Wisconsin Economic Development
13 Corporation, or the Bradley Center Sports and Entertainment Corporation may
14 terminate the contract without liability for the uncompleted portion or any materials
15 or services purchased or paid for by the contracting party for use in completing the
16 contract.

17 **SECTION 34.** 16.85 (2) of the statutes is amended to read:

18 16.85 (2) To furnish engineering, architectural, project management, and other
19 building construction services whenever requisitions therefor are presented to the
20 department by any agency. The department may deposit moneys received from the
21 provision of these services in the account under s. 20.505 (1) (kc) or in the general
22 fund as general purpose revenue — earned. In this subsection, “agency” means an
23 office, department, independent agency, institution of higher education, association,
24 society, or other body in state government created or authorized to be created by the
25 constitution or any law, which is entitled to expend moneys appropriated by law,

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1 including the legislature and the courts, but not including an authority created in
2 subch. II of ch. 114 or subch. III of ch. 636 or in ch. 231, 233, 234, 237, 238, or 279.

3 **SECTION 35.** 16.865 (8) of the statutes is amended to read:

4 16.865 (8) Annually in each fiscal year, allocate as a charge to each agency a
5 proportionate share of the estimated costs attributable to programs administered by
6 the agency to be paid from the appropriation under s. 20.505 (2) (k). The department
7 may charge premiums to agencies to finance costs under this subsection and pay the
8 costs from the appropriation on an actual basis. The department shall deposit all
9 collections under this subsection in the appropriation account under s. 20.505 (2) (k).
10 Costs assessed under this subsection may include judgments, investigative and
11 adjustment fees, data processing and staff support costs, program administration
12 costs, litigation costs, and the cost of insurance contracts under sub. (5). In this
13 subsection, “agency” means an office, department, independent agency, institution
14 of higher education, association, society, or other body in state government created
15 or authorized to be created by the constitution or any law, that is entitled to expend
16 moneys appropriated by law, including the legislature and the courts, but not
17 including an authority created in subch. II of ch. 114 or subch. III of ch. 636 or in ch.
18 231, 232, 233, 234, 237, 238, or 279.

19 **SECTION 36.** 25.50 (1) (d) of the statutes is amended to read:

20 25.50 (1) (d) “Local government” means any county, town, village, city, power
21 district, sewerage district, drainage district, town sanitary district, public inland
22 lake protection and rehabilitation district, local professional baseball park district
23 created under subch. III of ch. 229, long-term care district under s. 46.2895, local
24 professional football stadium district created under subch. IV of ch. 229, local
25 cultural arts district created under subch. V of ch. 229, public library system, school

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1 district or technical college district in this state, any commission, committee, board
2 or officer of any governmental subdivision of this state, any court of this state, other
3 than the court of appeals or the supreme court, or any authority created under s.
4 114.61, 231.02, 233.02, ~~or 234.02, or 636.70.~~

5 **SECTION 37.** 40.02 (54) (n) of the statutes is created to read:

6 40.02 **(54)** (n) The Badger Health Benefit Authority.

7 **SECTION 38.** 49.45 (2) (a) 3. of the statutes is amended to read:

8 49.45 **(2)** (a) 3. ~~Determine~~ Subject to s. 636.30 (1) (o), determine the eligibility
9 of persons for medical assistance, rehabilitative, and social services under ss. 49.46,
10 49.468, 49.47, and 49.471 and rules and policies adopted by the department and may,
11 under a contract under s. 49.78 (2), delegate all, or any portion, of this function to the
12 county department under s. 46.215, 46.22, or 46.23 or a tribal governing body.

13 **SECTION 39.** 70.11 (41c) of the statutes is created to read:

14 70.11 **(41c)** BADGER HEALTH BENEFIT AUTHORITY. All property owned by the
15 Badger Health Benefit Authority, provided that the use of the property is primarily
16 related to the purposes of the authority.

17 **SECTION 40.** 71.26 (1) (be) of the statutes is amended to read:

18 71.26 **(1)** (be) *Certain authorities.* Income of the University of Wisconsin
19 Hospitals and Clinics Authority, of the Badger Health Benefit Authority, of the Fox
20 River Navigational System Authority, of the Wisconsin Economic Development
21 Corporation, and of the Wisconsin Aerospace Authority.

22 **SECTION 41.** 77.54 (9a) (a) of the statutes is amended to read:

23 77.54 **(9a)** (a) This state or any agency thereof, the University of Wisconsin
24 Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Badger

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1 Health Benefit Authority, the Wisconsin Economic Development Corporation, and
2 the Fox River Navigational System Authority.

3 **SECTION 42.** 101.055 (2) (a) of the statutes is amended to read:

4 101.055 (2) (a) “Agency” means an office, department, independent agency,
5 authority, institution, association, society, or other body in state government created
6 or authorized to be created by the constitution or any law, and includes the
7 legislature and the courts, but excludes the Badger Health Benefit Authority.

8 **SECTION 43.** 230.03 (3) of the statutes is amended to read:

9 230.03 (3) “Agency” means any board, commission, committee, council, or
10 department in state government or a unit thereof created by the constitution or
11 statutes if such board, commission, committee, council, department, unit, or the
12 head thereof, is authorized to appoint subordinate staff by the constitution or
13 statute, except the Board of Regents of the University of Wisconsin System, a
14 legislative or judicial board, commission, committee, council, department, or unit
15 thereof or an authority created under subch. II of ch. 114 or subch. III of ch. 636 or
16 under ch. 231, 232, 233, 234, 237, 238, or 279. “Agency” does not mean any local unit
17 of government or body within one or more local units of government that is created
18 by law or by action of one or more local units of government.

19 **SECTION 44.** 230.80 (4) of the statutes is amended to read:

20 230.80 (4) “Governmental unit” means any association, authority, board,
21 commission, department, independent agency, institution, office, society, or other
22 body in state government created or authorized to be created by the constitution or
23 any law, including the legislature, the office of the governor, and the courts, but
24 excluding the Badger Health Benefit Authority. “Governmental unit” does not mean

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1 any political subdivision of the state or body within one or more political subdivisions
2 that is created by law or by action of one or more political subdivisions.

3 **SECTION 45.** 230.90 (1) (c) of the statutes is amended to read:

4 230.90 (1) (c) "Governmental unit" means any association, authority, board,
5 commission, department, independent agency, institution, office, society or other
6 body in state government created or authorized to be created by the constitution or
7 any law, including the legislature, the office of the governor and the courts.
8 "Governmental unit" does not mean the University of Wisconsin Hospitals and
9 Clinics Authority, the Badger Health Benefit Authority, or any political subdivision
10 of the state or body within one or more political subdivisions which is created by law
11 or by action of one or more political subdivisions.

12 **SECTION 46.** 635.18 (1) of the statutes is amended to read:

13 635.18 (1) ~~Every~~ Any small employer insurer shall may actively market health
14 benefit plan coverage to small employers in the state.

15 **SECTION 47.** Chapter 636 of the statutes is created to read:

CHAPTER 636**HEALTH BENEFIT PLAN EXCHANGE****SUBCHAPTER I****GENERAL PROVISIONS**

20 **636.01 Definitions.** In this chapter:

21 (1) "Authority" means the Badger Health Benefit Authority.

22 (2) "Educated health care consumer" means an individual who is
23 knowledgeable about the health care system and who has background or experience
24 in making informed decisions regarding health, medical, and scientific matters.

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1 **(3)** “Federal act” means the federal Patient Protection and Affordable Care Act,
2 P.L. 111-148, as amended by the federal Health Care and Education Reconciliation
3 Act of 2010, P.L. 111-152, and any amendments to, or regulations or guidance issued
4 under, those acts.

5 **(4)** (a) Except as provided in pars. (b) to (e), “health benefit plan” means a policy,
6 contract, certificate, or agreement offered or issued by a health carrier to provide,
7 deliver, arrange for, pay for, or reimburse any of the costs of health care services.

8 (b) “Health benefit plan” does not include any of the following:

9 1. Coverage only for accident, or disability income insurance, or any
10 combination of those.

11 2. Coverage issued as a supplement to liability insurance.

12 3. Liability insurance, including general liability insurance and automobile
13 liability insurance.

14 4. Worker’s compensation or similar insurance.

15 5. Automobile medical payment insurance.

16 6. Credit-only insurance.

17 7. Coverage for on-site medical clinics.

18 8. Other similar insurance coverage, specified in federal regulations issued
19 under P.L. 104-191, under which benefits for health care services are secondary or
20 incidental to other insurance benefits.

21 (c) “Health benefit plan” does not include any of the following benefits if they
22 are provided under a separate policy, certificate, or contract of insurance or otherwise
23 not an integral part of the plan:

24 1. Limited scope dental or vision benefits.

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1 2. Benefits for long-term care, nursing home care, home health care,
2 community-based care, or any combination of those.

3 3. Other similar, limited benefits specified in federal regulations issued under
4 P.L. 104-191.

5 (d) "Health benefit plan" does not include any of the following benefits if the
6 benefits are provided under a separate policy, certificate, or contract of insurance,
7 there is no coordination between the provision of the benefits and any exclusion of
8 benefits under any group health plan maintained by the same plan sponsor, and the
9 benefits are paid with respect to an event without regard to whether benefits are
10 provided with respect to such an event under any group health plan maintained by
11 the same plan sponsor:

12 1. Coverage only for a specified disease or illness.

13 2. Hospital indemnity or other fixed indemnity insurance.

14 (e) "Health benefit plan" does not include any of the following if offered as a
15 separate policy, certificate, or contract of insurance:

16 1. Medicare supplemental health insurance as defined under section 1882 (g)
17 (1) of the federal Social Security Act.

18 2. Coverage supplemental to the coverage provided under the Civilian Health
19 and Medical Program of the Uniformed Services 10 USC ch. 55.

20 3. Similar coverage supplemental to coverage provided under a group health
21 plan.

22 **(5)** "Health carrier" means an entity subject to the insurance laws and rules
23 of this state, or subject to the jurisdiction of the commissioner, that contracts or offers
24 to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of
25 health care services, including a sickness and accident insurance company, a health

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1 maintenance organization, a nonprofit hospital and health service corporation, or
2 any other entity providing a plan of health insurance, health benefits, or health
3 services.

4 **(5m)** “Minimum essential coverage” has the meaning given in 26 USC 5000A
5 (f) (1).

6 **(6)** “Qualified dental plan” means a limited scope dental plan that has been
7 certified in accordance with s. 636.42 (5).

8 **(7)** “Qualified employer” means a small employer that elects to make its
9 full-time employees eligible for one or more qualified health plans offered through
10 the SHOP Exchange and, at the option of the employer, some or all of its part-time
11 employees, provided that the employer satisfies any of the following:

12 (a) The employer has its principal place of business in this state and elects to
13 provide coverage through the SHOP Exchange to all of its eligible employees,
14 wherever employed.

15 (b) The employer elects to provide coverage through the SHOP Exchange to all
16 of its eligible employees who are principally employed in this state.

17 **(8)** “Qualified health plan” means a health benefit plan that has in effect a
18 certification that the plan meets the criteria for certification described in section
19 1311 (c) of the federal act and s. 636.42.

20 **(9)** “Qualified individual” means an individual, including a minor, who satisfies
21 all of the following:

22 (a) The individual is seeking to enroll in a qualified health plan offered to
23 individuals through the exchange under subch. II.

24 (b) The individual resides in this state.

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1 (c) At the time of enrollment, the individual is not incarcerated in a correctional
2 facility, other than incarceration pending the disposition of charges.

3 (d) The individual is, and is reasonably expected to be for the entire period for
4 which enrollment is sought, a citizen or national of the United States or an alien
5 lawfully present in the United States.

6 **(10)** "Secretary" means the secretary of the federal department of health and
7 human services.

8 **(11)** "SHOP Exchange" means a small business health options program
9 established under s. 636.30 (1) (q).

10 **(12)** (a) "Small employer" means an employer that employed an average of not
11 more than 100 employees during the preceding calendar year.

12 (b) For purposes of this subsection, all of the following apply:

13 1. All persons treated as a single employer under section 414 (b), (c), (m), or (o)
14 of the Internal Revenue Code shall be treated as a single employer.

15 2. An employer and any predecessor employer shall be treated as a single
16 employer.

17 3. All employees shall be counted, including part-time employees and
18 employees who are not eligible for coverage through the employer.

19 4. If an employer was not in existence during the entire preceding calendar
20 year, the determination of whether that employer is a small employer shall be based
21 on the average number of employees that it is reasonably expected that employer will
22 employ on business days in the current calendar year.

23 5. An employer that makes enrollment in qualified health plans available to
24 its employees through the SHOP Exchange and that would cease to be a small
25 employer by reason of an increase in the number of its employees shall continue to

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1 be treated as a small employer for purposes of this chapter as long as it continuously
2 makes enrollment through the SHOP Exchange available to its employees.

SUBCHAPTER II

OPERATION OF EXCHANGE

5 **636.25 General matters.** (1) The authority shall establish and operate a
6 Wisconsin Health Benefit Exchange and shall make qualified health plans, with
7 effective dates on or before January 1, 2018, available to qualified individuals and
8 qualified employers.

9 (2) (a) The authority may not make available any health benefit plan that is
10 not a qualified health plan.

11 (b) The authority shall allow a health carrier to offer a plan that provides
12 limited scope dental benefits meeting the requirements of section 9832 (c) (2) (A) of
13 the Internal Revenue Code through the exchange under sub. (1), either separately
14 or in conjunction with a qualified health plan, if the plan provides pediatric dental
15 benefits meeting the requirements of section 1302 (b) (1) (J) of the federal act.

16 (3) Neither the authority nor a health carrier offering health benefit plans
17 through the exchange under sub. (1) may charge an individual a fee or penalty for
18 termination of coverage if the individual enrolls in another type of minimum
19 essential coverage because the individual has become newly eligible for that
20 coverage or because the individual's employer-sponsored coverage has become
21 affordable under the standards of section 36B (c) (2) (C) of the Internal Revenue
22 Code.

23 (4) The authority may enter into information-sharing agreements with federal
24 and state agencies and entities operating exchanges in other states to carry out its
25 responsibilities under this chapter, provided that such agreements include adequate

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1 protections with respect to the confidentiality of the information to be shared and
2 comply with all state and federal laws and rules and regulations.

3 **636.30 Exchange duties and powers. (1)** In addition to all other duties
4 imposed under this chapter, the authority shall do all of the following relating to the
5 exchange under s. 636.25 (1):

6 (a) Implement procedures for the certification, recertification, and
7 decertification, consistent with guidelines developed by the secretary under section
8 1311 (c) of the federal act and s. 636.42, of health benefit plans as qualified health
9 plans.

10 (b) Provide for the operation of a toll-free telephone hotline to respond to
11 requests for assistance.

12 (c) Provide for enrollment periods, as provided under section 1311 (c) (6) of the
13 federal act.

14 (d) Maintain an Internet site through which enrollees and prospective
15 enrollees of qualified health plans may obtain standardized comparative
16 information on such plans.

17 (e) Assign a rating to each qualified health plan offered through the exchange
18 in accordance with the criteria developed by the secretary under section 1311 (c) (3)
19 of the federal act, and determine each qualified health plan's level of coverage in
20 accordance with regulations issued by the secretary under section 1302 (d) (2) (A) of
21 the federal act.

22 (f) Use a standardized format for presenting health benefit options in the
23 exchange, including the use of the uniform outline of coverage established under 42
24 USC 300gg-15.

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1 (g) Establish quality improvement standards for health benefit plans offered
2 through the exchange.

3 (h) Establish a system for enrolling eligible groups and individuals, using a
4 standard application form developed by the commissioner under s. 636.46 (2).

5 (i) Establish procedures for collecting premiums and remitting premium
6 payments and providing enrollment information to health carriers.

7 (j) Establish, in consultation with the commissioner, the method for
8 determining the amount of the surcharge under s. 636.45 (1) and establish the
9 procedure for imposing and collecting the surcharge.

10 (k) Establish a plan for publicizing the exchange and the eligibility
11 requirements and enrollment procedures.

12 (L) Establish and operate a service center to provide information to small
13 employers, individuals, enrollees, and insurance intermediaries about the exchange.

14 (m) Establish a mechanism for regular communication and cooperation with
15 insurance intermediaries.

16 (n) Establish an independent and binding appeals process for resolving
17 disputes over eligibility and other determinations made by the authority.

18 (o) In accordance with section 1413 of the federal act, inform individuals of
19 eligibility requirements for Medical Assistance under subch. IV of ch. 49 or any other
20 applicable state or local public program and if, through screening of the application
21 by the authority, the authority determines that any individual is eligible for any such
22 program, assist that individual to enroll in that program.

23 (p) Establish and make available by electronic means a calculator to determine
24 the actual cost of coverage after application of any premium tax credit under section

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1 36B of the Internal Revenue Code and any cost-sharing reduction under section
2 1402 of the federal act.

3 (q) Establish a SHOP Exchange through which qualified employers may access
4 health care coverage for their employees and that shall enable any qualified
5 employer to specify the level of coverage at which its employees may enroll in any
6 qualified health plan offered through the SHOP Exchange.

7 (r) Perform duties required of the authority by the secretary or the federal
8 secretary of the treasury related to determining eligibility for premium tax credits,
9 reduced cost sharing, or individual responsibility requirement exemptions.

10 (s) Select entities, which may include insurance intermediaries, that are
11 qualified to serve as navigators in accordance with section 1311 (i) of the federal act
12 and standards developed by the secretary, and award grants to enable navigators to
13 do all of the following:

14 1. Conduct public education activities to raise awareness of the availability of
15 qualified health plans.

16 2. Distribute fair and impartial information concerning enrollment in qualified
17 health plans and concerning the availability of premium tax credits under section
18 36B of the Internal Revenue Code and cost-sharing reductions under section 1402
19 of the federal act.

20 3. Facilitate enrollment in qualified health plans.

21 4. Provide referrals to any applicable office of health insurance consumer
22 assistance or health insurance ombudsman established under 42 USC 300gg-93, or
23 to any other appropriate state agency or agencies, for any enrollee with a grievance,
24 complaint, or question regarding the enrollee's health benefit plan, coverage, or
25 determination under that plan or coverage.

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1 5. Provide information in a manner that is culturally and linguistically
2 appropriate to the needs of the population being served by the exchange.

3 (t) Assist in the coordination of any necessary administrative operations
4 between the department of corrections and the department of health services to
5 ensure all of the following:

6 1. That an individual, upon placement in a correctional facility, is disenrolled
7 for the duration of his or her incarceration from any health care coverage in which
8 he or she is enrolled.

9 2. That an individual who is incarcerated in a correctional facility, but
10 scheduled to be released from incarceration in the near future, is enrolled prior to
11 release, through the exchange and effective upon the date of his or her release, in
12 Medical Assistance, a qualified health plan, or some other form of minimum
13 essential coverage on the date of his or her release from incarceration.

14 (u) For those persons whose alcohol or other drug abuse or mental health
15 treatment is not covered by a federally administered program, coordinate the
16 relationships among the Medical Assistance program, the exchange, and the county
17 departments under s. 51.42 or 51.437 to provide outpatient and inpatient mental
18 health and alcohol or other drug abuse treatment with all of the following goals for
19 the coordination:

20 1. Maximizing coverage and improving access through the exchange for
21 outpatient and inpatient treatment of mental illness and alcohol or other drug abuse.

22 2. Improving the quality of treatment for persons with alcohol or other drug
23 dependence or a mental illness.

24 3. Fully integrating the treatment for physical conditions, alcohol or other drug
25 abuse, and mental illness.

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1 4. Reducing the cost of the county departments under ss. 51.42 and 51.437 to
2 taxpayers by avoiding unnecessary overlap between the improved coverage of
3 alcohol or other drug abuse treatment or mental illness treatment by health plans
4 offered through the exchange and the services provided by county departments
5 under s. 51.42 or 51.437.

6 (v) Review the rate of premium growth within the exchange and outside the
7 exchange, and consider the information in developing recommendations on whether
8 to continue limiting qualified employer status to small employers.

9 (w) Credit the amount of any free choice voucher to the monthly premium of
10 the plan in which a qualified employee is enrolled, in accordance with section 10108
11 of the federal act, and collect the amount credited from the offering employer.

12 (x) Consult with stakeholders relevant to carrying out the activities required
13 under this chapter, including any of the following:

- 14 1. Educated health care consumers who are enrollees in qualified health plans.
- 15 2. Individuals and entities with experience in facilitating enrollment in
16 qualified health plans.
- 17 3. Representatives of small businesses and self-employed individuals.
- 18 4. The department of health services.
- 19 5. Advocates for enrolling hard-to-reach populations.

20 (y) Meet all of the following financial integrity requirements:

21 1. Keep an accurate accounting of all activities, receipts, and expenditures and
22 annually submit to the secretary, the governor, the commissioner, and the legislature
23 a report concerning such accountings.

24 2. Fully cooperate with any investigation conducted by the secretary under the
25 secretary's authority under the federal act and allow the secretary, in coordination

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1 with the inspector general of the federal department of health and human services,
2 to do all of the following:

- 3 a. Investigate the affairs of the authority.
- 4 b. Examine the properties and records of the authority.
- 5 c. Require periodic reports in relation to the activities undertaken by the
6 authority.

7 3. In carrying out its activities under this chapter, not use any funds intended
8 for the administrative and operational expenses of the authority for staff retreats,
9 promotional giveaways, excessive executive compensation, or promotion of federal
10 or state legislative or regulatory modifications, except that this subdivision does not
11 prohibit the authority from advocating, as part of administering the exchange, for
12 policies that the authority determines are in the best interest of the exchange or of
13 individuals and employees receiving coverage through the exchange.

14 (2) The authority may do all of the following relating to the exchange under s.
15 636.25 (1):

16 (a) Contract with a 3rd-party administrator for the provision of services on
17 behalf of the exchange.

18 (b) Establish risk adjustment mechanisms for the exchange.

19 (c) Enter into agreements with or establish sub-exchanges.

20 (d) Create any other exchange, or component of the exchange, that is provided
21 for under federal law.

22 (3) The authority shall seek grants to the fullest extent to which it is eligible,
23 including amounts under section 1311 (a) (1) and (4) of the federal act, or other
24 funding from the federal or state government for which it may be eligible and from
25 private foundations for the purpose of the exchange under s. 636.25 (1).

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1 **636.42 Health benefit plan certification.** (1) The authority may certify a
2 health benefit plan as a qualified health plan if all of the following are true:

3 (a) The plan provides the essential health benefits package described in section
4 1302 (a) of the federal act, except that the plan is not required to provide essential
5 benefits that duplicate the minimum benefits of qualified dental plans, as provided
6 in sub. (5), if all of the following are satisfied:

7 1. The authority has determined that at least one qualified dental plan is
8 available to supplement the plan's coverage.

9 2. The health carrier makes prominent disclosure at the time it offers the plan,
10 in a form approved by the authority, that the plan does not provide the full range of
11 essential pediatric benefits and that qualified dental plans providing those benefits
12 and other dental benefits not covered by the plan are offered through the exchange
13 under s. 636.25 (1).

14 (b) The premium rates and contract language have been filed with and not
15 disapproved by the commissioner.

16 (c) The plan provides at least a bronze level of coverage, as determined under
17 s. 636.30 (1) (e), unless the plan is certified as a qualified catastrophic plan, meets
18 the requirements of the federal act for catastrophic plans, and will only be offered to
19 individuals eligible for catastrophic coverage.

20 (d) The plan's cost-sharing requirements do not exceed the limits established
21 under section 1302 (c) (1) of the federal act and, if the plan is offered through the
22 SHOP Exchange, the plan's deductible does not exceed the limits established under
23 section 1302 (c) (2) of the federal act.

24 (e) The health carrier offering the plan satisfies all of the following:

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1 1. Is licensed and in good standing to offer health insurance coverage in this
2 state.

3 2. Offers at least one qualified health plan in the silver level and at least one
4 qualified health plan in the gold level through each component of the exchange in
5 which the health carrier participates. In this subdivision, “component” refers to the
6 SHOP Exchange or the exchange under s. 636.25 for individual coverage.

7 3. Charges the same premium rate for each qualified health plan without
8 regard to whether the plan is offered directly from the health carrier or through an
9 insurance intermediary.

10 4. Does not charge any cancellation fees or penalties in violation of s. 636.25
11 (3).

12 5. Complies with the regulations developed by the secretary under section 1311
13 (d) of the federal act and such other requirements as the authority may establish.

14 (f) The plan meets the requirements of certification as required by any rules
15 promulgated under s. 636.46 (1) and by the secretary under section 1311 (c) of the
16 federal act, including minimum standards in the areas of marketing practices,
17 network adequacy, essential community providers in underserved areas,
18 accreditation, quality improvement, uniform enrollment forms, and descriptions of
19 coverage and information on quality measures for health benefit plan performance.

20 (g) The authority determines that making the plan available through the
21 exchange under s. 636.25 (1) is in the interest of qualified individuals and qualified
22 employers in this state.

23 **(2)** The authority shall not exclude a health benefit plan for any of the following
24 reasons or in any of the following ways:

25 (a) On the basis that the plan is a fee-for-service plan.

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1 (b) Through the imposition of premium price controls by the authority.

2 (c) On the basis that the plan provides treatments necessary to prevent
3 patients' deaths in circumstances the authority determines are inappropriate or too
4 costly.

5 **(3)** The authority shall require each health carrier seeking certification of a
6 health benefit plan as a qualified health plan to do all of the following:

7 (a) Submit a justification for any premium increase before implementation of
8 that increase. The health carrier shall prominently post the information on its
9 Internet site. The authority shall take this information, along with the information
10 and the recommendations provided to the authority by the commissioner under 42
11 USC 300gg-94 (b), into consideration when determining whether to allow the health
12 carrier to make the plan available through the exchange under s. 636.25 (1).

13 (b) 1. Make available to the public, in the format described in subd. 2., and
14 submit to the authority, the secretary, and the commissioner, accurate and timely
15 disclosure of all of the following:

16 a. Claims payment policies and practices.

17 b. Periodic financial disclosures.

18 c. Data on enrollment.

19 d. Data on disenrollment.

20 e. Data on the number of claims that are denied.

21 f. Data on rating practices.

22 g. Information on cost sharing and payments with respect to any
23 out-of-network coverage.

24 h. Information on enrollee and participant rights under title I of the federal act.

25 i. Other information as determined appropriate by the secretary.

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1 2. The information required in subd. 1. shall be provided in plain language, as
2 that term is defined in section 1311 (e) (3) (B) of the federal act.

3 (c) Permit individuals to learn, in a timely manner upon the request of the
4 individual, the amount of cost sharing, including deductibles, copayments, and
5 coinsurance, under the individual's plan or coverage that the individual would be
6 responsible for paying with respect to the furnishing of a specific item or service by
7 a participating provider. At a minimum, this information shall be made available
8 to the individual through an Internet site and through other means for individuals
9 without access to the Internet.

10 (4) The authority may not exempt any health carrier seeking certification of
11 a health benefit plan as a qualified health plan, regardless of the type or size of the
12 health carrier, from state licensure or solvency requirements and shall apply the
13 criteria of this section in a manner that assures equitable treatment of all health
14 carriers participating in the exchange under s. 636.25 (1).

15 (5) (a) The provisions of this chapter that are applicable to qualified health
16 plans shall also apply to the extent relevant to qualified dental plans, except as
17 modified in accordance with pars. (b), (c), and (d) or by regulations adopted by the
18 authority.

19 (b) The health carrier shall be licensed to offer dental coverage, but need not
20 be licensed to offer other health benefits.

21 (c) The plan shall be limited to dental and oral health benefits, without
22 substantially duplicating the benefits typically offered by health benefit plans
23 without dental coverage, and shall include, at a minimum, the essential pediatric
24 dental benefits prescribed by the secretary under section 1302 (b) (1) (J) of the federal

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1 act and such other dental benefits as the authority or the secretary may specify by
2 regulation.

3 (d) Health carriers may jointly offer a comprehensive plan through the
4 exchange under s. 636.25 (1) in which the dental benefits are provided by a health
5 carrier through a qualified dental plan and the other benefits are provided by a
6 health carrier through a qualified health plan, provided that the plans are priced
7 separately and are also made available for purchase separately at the same price.

8 **636.43 Insurer requirements.** (1) Any health carrier that is authorized to
9 do business in this state in one or more lines of insurance that includes health
10 insurance may offer health benefit plans through the exchange under s. 636.25 (1).
11 After the exchange becomes operational, no health carrier may offer or issue a health
12 benefit plan in this state to an individual or to a small employer except through the
13 exchange.

14 (2) For the purpose of determining premiums, a health carrier may pool
15 together all individuals and employees who have coverage under all of the qualified
16 health plans issued by the health carrier through the exchange under s. 636.25 (1).

17 (3) A health carrier that offers qualified health plans through the exchange
18 under s. 636.25 (1) shall establish a toll-free hotline for providing information to
19 enrollees and other individuals and shall furnish such reasonable reports as the
20 authority determines necessary for the administration of the exchange.

21 (4) The authority may audit any health carrier that provides coverage under
22 a qualified health plan through the exchange under s. 636.25 (1) for the purpose of
23 ensuring that the health carrier is providing covered individuals with the benefits
24 provided for under this subchapter in a manner that does all of the following:

25 (a) Complies with the provisions of this chapter.

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1 (b) Promotes positive health outcomes.

2 (c) Advances value-based and evidence-based medical practices.

3 (d) Avoids unnecessary operating and capital costs arising from inappropriate
4 utilization or inefficient delivery of health care services, unwarranted duplication of
5 services and infrastructure, or creation of excess care delivery capacity.

6 (e) Holds down the growth of health care costs.

7 **636.44 Intermediaries.** An insurance intermediary that enrolls a qualified
8 individual in a qualified health plan through the exchange under s. 636.25 (1) shall
9 be paid a commission by the health carrier offering the qualified health plan. An
10 insurance intermediary that enrolls the employees of a qualified employer in one or
11 more qualified health plans through the exchange shall be paid a commission by each
12 health carrier offering a qualified health plan selected by an employee of the
13 qualified employer. The authority shall determine the commission amounts that
14 must be paid to intermediaries under this section.

15 **636.45 Funding; publication of costs.** (1) For payment of administrative
16 expenses, the authority may impose a surcharge on each health carrier offering
17 qualified health plans through the exchange under s. 636.25 (1). The surcharge shall
18 be based on the health carrier's total premium or flat dollar amount per enrollee
19 collected through the exchange.

20 (2) The authority shall publish the average costs of licensing, regulatory fees,
21 and any other payments required by the authority, and the administrative costs of
22 the authority, on an Internet site to educate consumers on such costs. This
23 information shall include information on moneys lost to waste, fraud, and abuse.

24 **636.46 Rules; application form.** (1) The commissioner may promulgate
25 rules to implement the provisions of this chapter. Rules promulgated under this

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1 section may not conflict with or prevent the application of regulations promulgated
2 by the secretary under the federal act.

3 (2) The commissioner shall develop a standard application form for use in the
4 exchange.

5 **636.48 Relation to other laws.** Nothing in this chapter, and no action taken
6 by the authority under this chapter, shall be construed to preempt or supersede the
7 authority of the commissioner to regulate the business of insurance within this state.
8 Except as expressly provided to the contrary in this chapter, all health carriers
9 offering qualified health plans in this state shall comply fully with all applicable
10 health insurance laws of this state and rules promulgated and orders issued by the
11 commissioner.

12 SUBCHAPTER III

13 BADGER HEALTH BENEFIT AUTHORITY

14 **636.70 Creation and organization of authority.** (1) There is created a
15 public body corporate and politic to be known as the “Badger Health Benefit
16 Authority.” The board of directors of the authority shall consist of the commissioner,
17 or his or her designee; the secretary of employee trust funds, or his or her designee;
18 the person who is appointed by the secretary of health services to be the director of
19 the Medical Assistance program, or his or her designee; the executive director, or his
20 or her designee, of the Wisconsin Collaborative for Healthcare Quality, if that
21 organization exists; the executive director, or his or her designee, of the Wisconsin
22 Health Information Organization, if that organization exists; and all of the following
23 members, who shall be nominated by the governor and, with the advice and consent
24 of the senate, appointed for 3-year terms except as provided in sub. (2):

25 (a) A member in good standing of the American Academy of Actuaries.

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1 (b) A health economist.

2 (c) An employee benefits specialist.

3 (d) A representative of small employers.

4 (e) A representative of an organization that represents consumer interests.

5 (f) A representative of organized labor.

6 (g) An individual with experience in health care administration.

7 **(2)** No member of the board appointed under sub. (1) (a) to (g) may be a health
8 care provider, as defined in s. 146.81 (1) (a) to (hp); an employee of a health care
9 provider, as defined in s. 146.81 (1) (i) to (p); an employee of an insurer that is
10 authorized to do business in the state; or an insurance intermediary.

11 **(3)** A vacancy on the board under sub. (1) shall be filled in the same manner
12 as the original appointment to the board for the remainder of the unexpired term,
13 if any.

14 **(4)** A member of the board under sub. (1) shall receive no compensation for
15 services under this chapter but shall be reimbursed for actual and necessary
16 expenses, including travel expenses, incurred in the discharge of the member's
17 duties under this chapter.

18 **(5)** The commissioner or the commissioner's designee shall be the chairperson
19 of the board under sub. (1). Seven members of the board constitute a quorum for the
20 purpose of conducting the business and exercising the powers of the authority,
21 notwithstanding the existence of any vacancy. The board may take action upon a vote
22 of a majority of the members present, unless the bylaws of the authority require a
23 larger number.

24 **(6)** The board under sub. (1) shall appoint an executive director who shall not
25 be a member of the board and who shall serve at the pleasure of the board. The

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1 executive director shall receive compensation commensurate with the duties of the
2 office, as determined by the board. The executive director shall serve as secretary
3 of the authority and shall keep a record of the proceedings of the authority and shall
4 be custodian of all books, documents, and papers filed with the authority, the minute
5 book or journal of the authority, and its official seal. The executive director or other
6 person may cause copies to be made of all minutes and other records and documents
7 of the authority and may give certificates under the official seal of the authority to
8 the effect that such copies are true copies, and all persons dealing with the authority
9 may rely upon such certificates. The executive director shall have all of the following
10 duties:

11 (a) Supervising the administrative affairs and the general management and
12 operation of the authority.

13 (b) Planning, directing, coordinating, and executing administrative functions
14 in conformity with the policies and directives of the board.

15 (c) Employing professional and clerical staff, as necessary.

16 (d) Reporting to the board on all operations under his or her control and
17 supervision.

18 (e) Preparing an annual budget and managing the administrative expenses of
19 the authority.

20 (f) Undertaking any activities necessary to implement the powers and duties
21 set forth in this chapter.

22 **636.72 Authority duties.** In addition to all other duties imposed under this
23 chapter, the authority shall do all of the following:

24 (1) Establish its annual budget and monitor its fiscal management.

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1 (2) No later than 2 years after an exchange under subch. II begins operation,
2 and annually thereafter, submit a report to the legislature under s. 13.172 (2) and
3 to the governor on the operation of any exchange under subch. II, including a review
4 of all of the following:

5 (a) Progress toward the goals of the exchange.

6 (b) The operations and administration of the exchange.

7 (c) The types of health insurance plans available to eligible individuals and
8 groups and the percentage of the total exchange enrollees served by each plan.

9 (d) Surveys and reports on the insurers' experiences with different plans,
10 including aggregated data on enrollees, claims, statistics, complaint data, and
11 enrollee satisfaction data.

12 (e) Significant observations regarding utilization and adoption of the
13 exchange.

14 (3) Annually submit to the governor and the legislative audit bureau a
15 statement of its activities and financial condition.

16 (4) Approve the use of any trademarks, seals, or logos by participating insurers
17 and small employers.

18 (5) Comply with the requirements of s. 16.413 as if the authority is a state
19 agency.

20 **636.74 Authority powers.** The authority has all of the powers necessary or
21 convenient to carry out its duties under this chapter, except that it may not acquire
22 or hold title to real estate or issue bonds. In addition, the authority may do any of
23 the following:

24 (1) Adopt bylaws and policies and procedures for the regulation of its affairs
25 and the conduct of its business.

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1 (2) Have a seal and alter the seal at pleasure, have perpetual existence, and
2 maintain an office.

3 (3) Hire employees, define their duties, and fix their rate of compensation.

4 (4) Delegate by resolution to one or more of its members any powers and duties
5 that it considers proper.

6 (5) Incur debt.

7 (6) Appoint any technical or professional advisory committee that the
8 authority finds necessary to assist the authority in exercising its duties and powers.
9 If the authority appoints a committee, the authority shall define the duties of the
10 committee and provide reimbursement for the expenses of the committee.

11 (7) Accept gifts, grants, loans, or other contributions from private or public
12 sources.

13 (8) Procure liability insurance.

14 (9) Sue and be sued in its own name and plead and be impleaded.

15 (10) Execute contracts and other instruments, including contracts for
16 professional or technical services required for the authority or the operation of an
17 exchange under subch. II.

18 **636.76 Contracting for professional services.** (1) Whenever contracting
19 for professional services, the authority shall solicit competitive sealed bids or
20 competitive sealed proposals, whichever is appropriate. Each request for
21 competitive sealed proposals shall state the relative importance of price and other
22 evaluation factors.

23 (2) (a) When the estimated cost exceeds \$25,000, the authority may invite
24 competitive sealed bids or proposals by publishing a class 2 notice under ch. 985 or
25 by posting notice on the Internet at a site determined or approved by the authority.

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1 The notice shall describe the contractual services to be purchased, the intent to make
2 the procurement by solicitation of bids or proposals, any requirement for surety, and
3 the date the bids or proposals will be opened, which shall be at least 7 days after the
4 date of the last insertion of the notice or at least 7 days after the date of posting on
5 the Internet.

6 (b) When the estimated cost is \$25,000 or less, the authority may award the
7 contract in accordance with simplified procedures established by the authority for
8 such transactions.

9 (c) For purposes of clarification, the authority may discuss the requirements
10 of the proposed contract with any person who submits a bid or proposal and shall
11 permit any offerer to revise his or her bid or proposal to ensure its responsiveness to
12 those requirements.

13 **(3)** (a) The authority shall determine which bids or proposals are reasonably
14 likely to be awarded the contract and shall provide each offerer of such a bid or
15 proposal a fair and equal opportunity to discuss the bid or proposal. The authority
16 may negotiate with each offerer in order to obtain terms that are advantageous to
17 the authority. Prior to the award of the contract, any offerer may revise his or her
18 bid or proposal. The authority shall keep a written record of all meetings,
19 conferences, oral presentations, discussions, negotiations, and evaluations of bids or
20 proposals under this section.

21 (b) In opening, discussing, and negotiating bids or proposals, the authority may
22 not disclose any information that would reveal the terms of a competing bid or
23 proposal.

24 **(4)** (a) After receiving each offerer's best and final offer, the authority shall
25 determine which proposal is most advantageous and shall award the contract to the

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1 person who offered it. The authority's determination shall be based only on price and
2 the other evaluation factors specified in the request for bids or proposals. The
3 authority shall state in writing the reason for the award and shall place the
4 statement in the contract file.

5 (b) Following the award of the contract, the authority shall prepare a register
6 of all bids or proposals.

7 **636.78 Political activities. (1)** No employee of the authority may directly
8 or indirectly solicit or receive subscriptions or contributions for any partisan political
9 party or any political purpose while engaged in his or her official duties as an
10 employee. No employee of the authority may engage in any form of political activity
11 calculated to favor or improve the chances of any political party or any person seeking
12 or attempting to hold partisan political office while engaged in his or her official
13 duties as an employee or engage in any political activity while not engaged in his or
14 her official duties as an employee to such an extent that the person's efficiency during
15 working hours will be impaired or that he or she will be tardy or absent from work.
16 Any violation of this section is adequate grounds for dismissal.

17 (2) If an employee of the authority declares an intention to run for partisan
18 political office, the employee shall be placed on a leave of absence for the duration
19 of the election campaign and if elected shall no longer be employed by the authority
20 on assuming the duties and responsibilities of such office.

21 (3) An employee of the authority may be granted, by the executive director, a
22 leave of absence to participate in partisan political campaigning.

23 (4) Persons on leave of absence under sub. (2) or (3) shall not be subject to the
24 restrictions of sub. (1), except as they apply to the solicitation of assistance,
25 subscription, or support from any other employee in the authority.

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1 **636.80 Financial disclosure. (1)** In this section, “individual required to file”
2 means a person who is a member of the board of the authority or the executive
3 director of the authority.

4 **(2)** Each individual who in January of any year is an individual required to file
5 shall file with the ethics commission no later than April 30 of that year a statement
6 of economic interests meeting each of the requirements of s. 19.44 (1). The
7 information contained on the statement shall be current as of December 31 of the
8 preceding year.

9 **(3)** An individual required to file shall file with the ethics commission a
10 statement of economic interests meeting each of the requirements of s. 19.44 (1) no
11 later than 21 days following the date he or she assumes a position on the board or
12 the position of executive director if the individual required to file has not previously
13 filed a statement of economic interests with the ethics commission during that year.
14 The information on the statement shall be current as per the date he or she assumes
15 the position.

16 **(4)** If an individual required to file fails to make a timely filing, the ethics
17 commission shall promptly provide notice of the delinquency to the secretary of
18 administration, and to the executive director of the authority, or the chairperson of
19 the board if the executive director’s filing is untimely. Upon such notification, both
20 the secretary of administration and the executive director, or chairperson, shall
21 withhold all payments for compensation, reimbursement of expenses, and other
22 obligations to the individual until the ethics commission notifies those to whom
23 notice of the delinquency was provided that the individual has complied with this
24 section.

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1 (5) On its own motion or at the request of any individual required to file a
2 statement of economic interests, the ethics commission may extend the time for filing
3 or waive any filing requirement if the ethics commission determines that the literal
4 application of the filing requirements of this subchapter would work an
5 unreasonable hardship on that individual or that the extension of the time for filing
6 or waiver is in the public interest. The ethics commission shall set forth in writing
7 as a matter of public record its reason for the extension or waiver.

8 (6) (a) Any person who violates this section may be required to forfeit not more
9 than \$500 for each violation. If the court determines that the accused has realized
10 economic gain as a result of the violation, the court may, in addition, order the
11 accused to forfeit the amount gained as a result of the violation. The attorney
12 general, when so requested by the ethics commission, shall institute proceedings to
13 recover any forfeiture incurred under this subsection that is not paid by the person
14 against whom it is assessed.

15 (b) Any person who intentionally violates this section shall be fined not less
16 than \$100 nor more than \$5,000 or imprisoned not more than one year in the county
17 jail or both.

18 **636.82 Conflict of interest prohibited; exception.** (1) Except in
19 accordance with the ethics commission's advice under s. 19.46 (2) and except as
20 otherwise provided in sub. (2), a member of the board under s. 636.70 (1) and the
21 executive director of the authority may not do any of the following:

22 (a) Take any official action substantially affecting a matter in which the board
23 member or executive director, a member of his or her immediate family, or an
24 organization with which the board member or director is associated has a substantial
25 financial interest.

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1 (b) Use his or her office or position in a way that produces or assists in the
2 production of a substantial benefit, direct or indirect, for the board member or
3 executive director, one or more members of his or her immediate family either
4 separately or together, or an organization with which the board member or executive
5 director is associated.

6 (2) This section does not prohibit a board member under s. 636.70 (1) or the
7 executive director of the authority from taking any action concerning the lawful
8 payment of salaries or employee benefits or reimbursement of actual and necessary
9 expenses.

10 (3) (a) Any person who violates this section may be required to forfeit not more
11 than \$5,000 for each violation. If the court determines that the accused has realized
12 economic gain as a result of the violation, the court may, in addition, order the
13 accused to forfeit the amount gained as a result of the violation. The attorney
14 general, when so requested by the ethics commission, shall institute proceedings to
15 recover any forfeiture incurred under this subsection that is not paid by the person
16 against whom it is assessed.

17 (b) Any person who intentionally violates this section shall be fined not less
18 than \$100 nor more than \$5,000 or imprisoned not more than one year in the county
19 jail or both.

20 **636.84 Liability; expenses; limitations.** (1) Neither the state, nor any
21 political subdivision of the state, nor any officer, employee, or agent of the state or
22 a political subdivision who is acting within the scope of employment or agency is
23 liable for any debt, obligation, act, or omission of the authority.

24 (2) All of the expenses incurred by the authority in exercising its duties and
25 powers under this chapter shall be payable only from funds of the authority.

